DIGEST OF OTHER RECENT VIRGINIA DECISIONS.

Supreme Court of Appeals.

Note.—In this department we give the syllabus of every case decided by the Virginia Supreme Court of Appeals, except of such cases as are reported in full.

TAZEWELL COAL & IRON CO. *v.* GILLESPIE et al.

Jan. 18, 1912. On Rehearing, Sept. 9, 1912.

[75 S. E. 757.]

1. Reformation of Instruments (§ 25*)—Grounds—Objections to Relief—Changed Conditions.—Complainant corporation was organized to purchase and sell mineral lands, etc., all of the original stockholders, including defendants, having paid for their stock in land, and in 1888 defendant subscribed for a number of shares, intending to give therefor the whole of a certain tract, containing 1,980 acres, which the subscription recited should be taken at $2.50 an acre, and provided that it should be surveyed, if required by either party, and paid for in stock according to the number of acres. The surveyor by mistake omitted a portion of the land, and made a report showing only 1,572 acres. The mistake was discovered by complainant in 1905, and it sued to correct the mistake and recover the omitted part. At the time the suit was brought the outstanding capital stock equaled the authorized capital of the corporation, and only 3,500 of the 23,000 acres originally conveyed to complainant remained undisposed of, and defendants' land, including the omitted part, had advanced in value to $40 an acre. More than 142 per cent. dividends had been paid on the original stock, and the stock tendered to defendants in 1909 for the omitted land pursuant to the original subscription agreement will not pay over 50 or 60 cents on the dollar; its value having greatly depreciated. Held that, in view of the changed conditions, it would be inequitable to now correct the mutual mistake, and relief will be denied.

[Ed. Note.—For other cases, see Reformation of Instruments, Dec. Dig. § 25.*]

2. Reformation of Instruments (§ 32*)—Defenses—Laches.—In 1888 defendants subscribed to stock in a corporation organized to sell mineral lands, agreeing to convey in payment therefor a tract of land, supposed to contain 1,980 acres; but, owing to a mistake in the survey, a portion of the land was omitted. In 1905 the corporation first discovered facts arousing its suspicion that all the tract was not conveyed, and a committee, consisting of M. and G., one of the grantors, was appointed to have the land surveyed, and another of such grantors, upon being told the facts by M., replied that he would

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*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

look into the matter, without stating that he had already learned that the whole tract had not been conveyed and was trying to procure a deed for the omitted part for the benefit of the grantors individually. In 1908 the grantors placed a tenant on the omitted tract, of which the corporation learned in the spring of 1908, when it proceeded to have its right to the land investigated, and in June, 1909, it demanded a conveyance thereof from the subscribers, and on their refusal sued on July 31, 1909, to correct the original mistake and to compel a conveyance of the omitted part. Held, that the corporation was not guilty of laches.

[Ed. Note.—For other cases, see Reformation of Instruments, Cent. Dig. §§ 119-121; Dec. Dig. § 32.*]

3. **Equity (§ 6*)—Jurisdiction—Mistake.**—A favorite subject of equity jurisdiction is the award of relief against mutual mistake.

[Ed. Note.—For other cases, see Equity, Cent. Dig. § 14; Dec. Dig. § 6.*]

4. **Reformation of Instruments (§ 25*)—Grounds—Fairness.**—The award of reformation of a contract on the ground of mutual mistake must be fair and just to both parties without working special hardship to either.

[Ed. Note.—For other cases, see Reformation of Instruments, Dec. Dig. § 25.*]

5. **Specific Performance (§ 16*)—Objections to Relief—Injustice.**—Specific performance, as well as reformation of an instrument, for mutual mistake, will be refused, where the granting of the relief would work a hardship or injustice through change of circumstances not contemplated when the contract was made.

[Ed. Note.—For other cases, see Specific Performance, Cent. Dig. §§ 35, 36; Dec. Dig. § 16.*]

6. **Reformation of Instruments (§ 23*)—Relief—Estoppel.**—That stockholders of a corporation, who paid for their shares in land and were officers and directors of the corporation when the subscription contract was made, occupied a fiduciary relation to the corporation, would not estop them from claiming that the corporation was not entitled to have mistake as to the land conveyed to it for their stock corrected because of changed conditions, making such relief inequitable.

[Ed. Note.—For other cases, see Reformation of Instruments, Dec. Dig. § 23.*]

On Rehearing.

7. **Specific Performance (§ 119*)—Burden of Proof.**—The burden is upon one seeking specific performance of a contract to show that he is entitled to such relief.

[Ed. Note.—For other cases, see Specific Performance, Cent. Dig. §§ 382, 383; Dec. Dig. § 119.*]

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*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

Appeal from Circuit Court, Tazewell County.

Suit by the Tazewell Coal & Iron Company against Joseph S. Gillespie and others. Judgment for defendants, and complainant appeals. Affirmed.

Henry & Graham and *Phlegar, Powell, Price & Shelton,* for appellant.

Chapman & Gillespie, Henson & Bowen, and *A. S. Higginbotham* for appellees.

COLONIAL COAL & COKE CO. v. GASS.

Sept. 12, 1912.

[75 S. E. 775.]

1. **Master and Servant (§ 185*)—Fellow Servants—Effect of Rule.**—A rule of a coal mining company requiring miners to examine the condition of their working places and to report any unsafe condition, ceasing work until the place is made safe, merely requires each employee to take precautions for his own safety, and does not constitute one miner a vice principal, as affecting liability for death of a fellow miner caused by slate falling from the roof of the mine room.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 385-421; Dec. Dig. § 185.*].

2. **Death (§ 86*)—Wrongful Death—Damages—Measure.**—In an action by a mother for negligent death of her 18 year old son, she is entitled to recover the amount of his probable earnings during what would have probably been his lifetime, and not merely during her probable lifetime, though, having a husband, she was not dependent upon her son for support.

[Ed. Note.—For other cases, see Death, Cent. Dig. §§ 112-114, 119; Dec. Dig. § 86.*]

Error to Circuit Court, Wise County.

Action by Pearl Gass, administratrix, against Colonial Coal & Coke Company. Judgment for plaintiff, and defendant brings error. Reversed.

CARDWELL, J., Absent.

Vicary & Peery and *Bullitt & Chalkley,* for plaintiff in error.

William H. Werth and *E. M. & H. E. Fulton,* for defendant in error.

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*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.